

NTSB Order No. EA-4412

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 14th day of December, 1995

Docket SE-13798

respondent's private pilot certificate for violations of sections 61.15 and 67.20(a)(1) of the Federal Aviation Regulations ("FAR," 14 C.F.R. Parts 61 and 67), and section 609(c) of the Federal Aviation Act. The law judge affirmed the section 67.20(a)(1) charge only,<sup>2</sup> finding that respondent falsified two separate applications for an airman medical certificate.<sup>3</sup> He nevertheless upheld the sanction of revocation.

The revocation order was based in large part on the allegation that, on March 26, 1992, respondent knowingly operated an aircraft carrying cocaine and marijuana on board. Customs agents seized respondent's airman certificate at that time and forwarded it to the FAA. In his appeal, respondent asks the Board to give him credit for the time that the Administrator has been in possession of his certificate, apparently because he anticipates that the Administrator may require that he wait one year from the date of final disposition of his case before reapplying for a pilot certificate. See section 602 of the Federal Aviation Act of 1958, as amended, and 14 C.F.R. (...continued)

Respondent has filed a brief on appeal, to which the Administrator did not respond.

<sup>2</sup>FAR section 67.20 states, in pertinent part:

**Applications, certificates, logbooks, reports, records:  
Falsification, reproduction, or alteration.**

(a) No person may make or cause to be made--  
(1) Any fraudulent or intentionally false statement on any application for a medical certificate under this part[.]

<sup>3</sup>The Administrator had appealed the law judge's decision but later withdrew the appeal.

§ 61.13(g)(1). He further argues that the question is properly before the Board because the Board has stated that the sanction period in a revocation or suspension case begins running when the airman's certificate is surrendered to the Administrator.

Administrator v. Pope, 5 NTSB 538, 539 (1985).<sup>4</sup>

Notwithstanding respondent's apparent concern that the Administrator might not give him credit for the period of time he has been without his certificate, we do not believe that we have a sufficiently developed controversy at this point, as there has been no actual recertification denial by the Administrator. In the event the Administrator denies respondent recertification on the ground that he must wait a year, respondent may seek to file a petition with the Board for review of the Administrator's action under section 602(b) of the Federal Aviation Act of 1958, as amended, and ask for expedited consideration.<sup>5</sup>

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<sup>4</sup>Both parties stipulated at the hearing that the Administrator has been in possession of respondent's airman certificate since April 1992.

<sup>5</sup>See the Board's Rules of Practice, 49 C.F.R. Part 821, subpart C.

See also Administrator v. Johnson, NTSB EA-3929 at (1993), where the respondent, who was serving a prison sentence during the pendency of his appeal, sought to surrender his certificate to the Administrator while the appeal was ongoing, in an effort to serve the one-year waiting period while he was still incarcerated. He argued that he should have the right to waive the stay of the Administrator's order and that any sanction imposed should be retroactive to the date he first offered to surrender the certificate. The Administrator maintained that the respondent was not entitled to credit simply because he offered to surrender his certificate while he was imprisoned. The Board stated it was not a "matter appropriate for our review, as the period of time an airman whose certificate has been revoked must wait before applying for recertification is within the

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied; and
2. The Administrator's order and the initial decision are affirmed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT and GOGLIA, Members of the Board, concurred in the above opinion and order.

(..continued)  
Administrator's discretion." Id. at 10.